IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.410 OF 2006

Oil & Natural Gas Corporation Ltd. ... Petitioner

vs.

Jindal Drilling & Industries Ltd. ... Respondent

Mr.P.A.Sawant with Rafee P., Prakash Shinde i/b. M.Dhruva & Co., for Petitioner.

Mr.V.R.Rambhadran, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 9th October,2006

P.C.:-

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act,1996, challenging the Award made by the Arbitral Tribunal. It appears that the respondent had made two claims before the Arbitral Tribunal. One claim was regarding deduction made from the amount payable to the respondent in relation to the ground rent

and the other was regarding deduction made by the petitioner from the payment to be made to the respondent towards the amount spent by the petitioner for removal debris alleged to have been left behind by the respondent. The Arbitral Tribunal relying on clause 4.1(e) has held that the ground rent could be charged by the petitioner on expiry of Fifteen days from the receipt of notice by the respondent from the petitioner for removal of the material. The Arbitral Tribunal after going through the correspondence relied on by the parties has held that the first letter asking respondent to remove the material as contemplated by clause 4.1(e) is dated 3.8.2000 and therefore, the petitioner can recover ground rent for the period from 19.8.2000 till 6.10.2000. The Arbitral Tribunal, however, has observed that though the petitioner had given calculation for recovery of ground rent for the period from 6..3.1995 to 31.8.2000, it was not indicated by the petitioner to the Arbitral Tribunal how apportionment of the ground rent for the period 19.8.2000 to 6.10.2000, in relation to which the Arbitral Tribunal has found that the petitioner is entitled to claim ground rent was to be done. In so far as this aspect of the matter is concerned, the only submission that was made before me was that though the notice required by clause 4.1(e) was given on 3.8.2000, in view of the recitals of clause 4.1(d) the petitioner was entitled to recover ground rent after expiry of period of 30 days from the date on which the material lands on the property of the petitioner. It was also claimed that the Arbitral

Tribunal did not consider that in any case as the material was kept by the respondent on the property belonging to the petitioner, there was liability on the respondent to pay ground rent. Perusal of the Award shows that both those grounds were not raised before the Arbitral Tribunal. In any case I find that as there is specific provision made in the clause 4.1(e) in relation to the ground rent, it will rule out their being any implied liability to pay ground rent. If the petitioner wants to claim ground rent it will have to comply with the requirements of the terms of the contract and without complying with the terms of the contract it cannot claim ground rent. I do find that it is not even possible to raise any challenge to the findings recorded by the Arbitral Tribunal in this regard.

2. The next contention urged was that the respondent had left behind debris on the platform that was used by them. The petitioner was required to engage services of another vessel for removal of debris, and therefore, the amount that was paid by the petitioner to the other vessel for removal of of debris left behind by the respondent was required to be recovered by the petitioner from the respondent. The Arbitral Tribunal has dealt with this aspect in paragraphs 17.10 and 17.11 of the Award those read as under:-

"17.10 It is unfortunate that the

> Respondents did not follow the rudimentary principles of natural justice by issuing a notice to Claimants before or after the debris were recovered from the location B-55. The mere fact that the debris were recovered by Peerless Stena-II at the location where the Claimants Rig was deployed would not entitle Respondents to recover the expenses incurred thereon from the invoice pertaining to Rig "ED-HOLT". There must be evidence connecting the debris to the said Rig. There is no such evidence produced by Respondents.
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> 17.11. It may be interesting to note that on 9th February 2001, when the survey was carried out by MSV Flamboyan, two pieces debris, i.e. a steel plate measuring 0.5 mtrs. X 1 mtr. And a rope approximately 205 Mtrs. Long were observed. But the actual recovery made on 13 and 14 February,2001 by Peerless Stena-II consisted of a steel plate admeasuring 0.65 mtrs. X 0.45 mtrs. X 25 mm from the location B-55. No wire rope was recovered. It might have been carried away by the ocean currnets. This gives an indication that even the debris might have been carried from one place to another by the ocean currents."

It is clear that the Arbitral Tribunal has held that the petitioner is not entitled to claim any amount from the respondent towards expenditure alleged to have been incurred by it for removal of debris

because before removal of debris no notice, admittedly, was given by the petitioner to the respondent. No notice was given to the respondent even after removal of debris except when in April,2001 the respondent was asked to make payment. The Arbitral Tribunal has also held that the petitioner has not led any evidence to connect debris to the rig of the respondent. In other words, the Arbitral Tribunal has held that the petitioner has not led any evidence to show that the the debris for removal of which the other vessel was engaged was left behind by the respondent. The grounds that have been raised in the petition challenging this finding of the Arbitral Tribunal, according to the learned Counsel appearing for petitioner, are to be found in ground (f), (g), (h) & (o). They read as under:-

> "(f) The Petitioners state that the said Rig was deployed on Platform No.B-55 from 29th April,2000 to 13th May,2000 under Contract No.MRBC/DBG/MMR/RIGS(CH)/05/96/IS-6011.
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> The petitioners state that on 13th May 2000 the said Rig left the said location and moved to another location. The Petitioners state that in the Seabed Survey which was carried out at Location No.B-55 on 9th February, 2001 by Flamboyant MSV (Multi-purpose Support Vessel) it was found that there was two pieces of debris. The said debris was required to be removed and accordingly the same was removed between 13th February,2001 and 14th February 2001

by the Petitioners. For this purpose the support/services of MSV Peerless Stena-II was taken. MSV Peerless Stena-II recovered a steel plate from the said location No.B-55.

(g) The Petitioner states that by their letter dated 30th April 2001 the Petitioners gave notice to the Respondents about the deductions/recoveries made by the Petitioners in respect of the expenses incurred for clearing the debris at the location B-55. Hereto annexed and marked is Exhibit"A" is the said letter of 30th April,2001.

(h) The Petitioners state that accordingly the Petitioners submitted an invoice on 31st March,2001, for an amount of Rs.29,45,000 and Rs.2,20,875/- respectively the same were deducted from the catering services of Noble Ed Hold in March,2001 under Contract No.MR/DB/MAT/CT/RIGS/CANTILEVERH/14(65)/ 2000/OT-924/DY8DF-O175.

(o) The Petitioners state that on 28.12.2001 they recovered from the Respondents' Invoices No.11 and 13 a sum of Rs.16,67,371/- lakhs and Rs.82,56,424/-, aggregating to Rs.99,23,795/- lakhs towards the ground rent payable by the Respondents."

Perusal of the above grounds shows that those grounds can hardly be said to challenge the finding of the facts which have been recorded by the Arbitral Tribunal. To my mind it is clear that the present petition

has been filed by the petitioner challenging the well considered award when virtually no ground for challenging that award is available. It is to be noted that under the scheme of the Arbitration Act merely filing of petition under Section 34 of the Arbitration Act operates to stay recovery of the amount awarded by the Award. Considering the objects for which the Parliament has enacted the Arbitration Act and considering the limited jurisdiction that the Parliament has conferred on the Court to disturb an award made by Arbitral Tribunal, it is expected that each and every award made by the Arbitral Tribunal would not be challenged. In my opinion, that is more true in relation to the public bodies because unlike other litigants there is an additional duty cast on the public bodies to see that the public funds that they will be spending in filing the petition before the Court are not unnecessarily spent and time of the Court is not unnecessarily wasted. In this view of the matter therefore, in my opinion, merely order rejecting this petition will not serve the interest of justice, exemplary cost has to be imposed on the petitioner for indulging in such unnecessary litigation and for unnecessarily wasting Court's time. The petition is dismissed. The petitioner is directed to pay as and by way of cost of this petition an amount of Rs.25,000/- to the respondent. The amount of cost be paid within a period of two weeks from today.